

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF NEVADA

3 * * *

4 DEMETRI ALEXANDER,

Case No. 2:15-cv-02485-APG-VCF

5 v.

Plaintiff,

ORDER

6 NDOC et al.,

7 Defendants.

8
9 I. DISCUSSION

10 Plaintiff is a prisoner proceeding *pro se*. Plaintiff has submitted a civil rights
 11 complaint pursuant to 42 U.S.C. § 1983 and an application to proceed *in forma*
 12 *pauperis*. (Dkt. #1, 1-1). This Court has previously found that, on at least three (3)
 13 occasions, this Court and the Ninth Circuit Court of Appeals have dismissed civil actions
 14 and appeals commenced by Plaintiff while in detention as frivolous or for failure to state
 15 a claim upon which any relief may be granted.¹

16 Pursuant to 28 U.S.C. § 1915(g), “if [a] prisoner has, on 3 or more prior
 17 occasions, while incarcerated or detained in any facility, brought an action or appeal in a
 18 court of the United States that was dismissed on the grounds that it is frivolous,
 19 malicious, or fails to state a claim upon which relief may be granted,” he may not
 20 proceed *in forma pauperis* and, instead, must pay the full \$400.00 filing fee in advance
 21 unless he is “under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g).

22 Even though Plaintiff has “three strikes” the Court dismisses this case on the
 23 merits for maliciousness. The complaint in this case is the exact same complaint that
 24 Plaintiff filed on November 25, 2015 in *Alexander v. NDOC et al.*, 2:15-cv-02244-APG-

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 26 ¹ See *Alexander v. Nevada Department of Corrections et al.*, 3:14-cv-00596-MMD-WGC
 27 (dismissed by the district court for failure to state a claim and dismissed by the appellate
 28 court as frivolous); *Alexander v. Sullivan et al.*, 3:14-cv-00589-RCJ-WGC (dismissed by
 the district court for failure to state a claim and dismissed by the appellate court as
 frivolous). The Court takes judicial notice of its prior records in the above matters.

1 PAL. (Compare 2:15-cv-02244-APG-PAL, Dkt. #1-1, with 2:15-cv-02485-APG-VCF,
 2 Dkt. #1-1). The only difference between the two complaints is the date that Plaintiff
 3 signed each one with. In 2:15-cv-02244-APG-PAL, Plaintiff signed the complaint on
 4 November 19, 2015. (Dkt. #1-1 at 17). In the present case, Plaintiff signed the
 5 complaint on December 17, 2015. (Dkt. #1-1 at 17).

6 Duplicative lawsuits filed by a plaintiff proceeding *in forma pauperis* are subject to
 7 dismissal as either frivolous or malicious under 28 U.S.C. § 1915(e). See *Cato v.*
 8 *United States*, 70 F.3d 1103, 1105 n.2 (9th Cir. 1995) (citing *Bailey v. Johnson*, 846
 9 F.2d 1019, 1021 (5th Cir.1988) (holding that repetitious litigation of virtually identical
 10 causes of action is subject to dismissal as malicious)); *Pittman v. Moore*, 980 F.2d 994,
 11 994-95 (5th Cir.1993) (holding that it is malicious for a “pauper” to file a lawsuit that
 12 duplicates allegations of another pending federal lawsuit by the same plaintiff). An *in*
 13 *forma pauperis* complaint that merely repeats pending or previously litigated claims may
 14 be considered abusive and dismissed under § 1915(e). See *Cato*, 70 F.3d at 1105 n.2;
 15 *Bailey*, 846 F.2d at 1021.

16 Here, the Court finds that the present complaint is identical to the complaint filed
 17 in another pending federal lawsuit by the same plaintiff. As such, the Court finds that
 18 this second complaint is a duplicative lawsuit that was filed one month after the first one.
 19 The Court dismisses this lawsuit, with prejudice, as malicious and finds that this
 20 dismissal constitutes another strike under 28 U.S.C. § 1915(g).

21 **II. CONCLUSION**

22 For the foregoing reasons, it is ordered that Plaintiff’s application to proceed *in*
 23 *forma pauperis* (Dkt. #1) is denied.

24 It is further ordered that the Clerk of the Court shall file the complaint (Dkt. #1-1).

25 It is further ordered that the complaint is dismissed in its entirety, with prejudice
 26 and without leave to amend, for maliciousness because the complaint is duplicative of
 27 another pending lawsuit in this Court by the same plaintiff.

28 It is further ordered that Plaintiff currently has “three strikes” pursuant to 28
 U.S.C. § 1915(g). This dismissal constitutes an additional strike.

1 It is further ordered that the Clerk of the Court shall enter judgment accordingly.

2 It is further ordered that this Court certifies that any *in forma pauperis* appeal
3 from this order would not be taken "in good faith" pursuant to 28 U.S.C. § 1915(a)(3).

4 Dated: April 7, 2016.

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6 UNITED STATES DISTRICT JUDGE
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